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SB 3182 SD 2 HD 1
RELATING TO THE DEVELOPMENT AND USE OF GEOTHERMAL ENERGY

Statement for
House Committee on
Finance
Public Hearing - March 28, 1988

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SB 3182 SD 2 HD 1 directs the governor's advisory board on the underwater cable transmission project to develop legislation for establishing a comprehensive permit system relating to geothermal and cable system development prior to the convening of the 1989 legislative session. Such legislative recommendation shall include but not be limited to:

- 1) identification of the streamlining measures included in the consolidated permit process;
- 2) description of all current permit requirements, including those that appear redundant; and
- 3) analysis of the rationale for all current permit requirements and explanation of how concerns addressed by these requirements will be affected by proposed consolidations.

Our statement on this bill does not represent an institutional position of the University of Hawaii.

The Standing Committee Report on this bill appropriately recognizes the need to achieve a comprehensive understanding of all ramifications of legislation to consolidate and streamline review and permitting processes. However, SB 3182 SD2, HD1 presupposes that legislative action ~~is needed to assure permit simplification and coordination.~~ We are not convinced at this time that legislative action is needed to accomplish the intended goal.

A Unit of Water Resources Research Center

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Legislation is developed to meet identified management, environmental, or planning needs of the state and counties and enacted only after considerable thought, time, experience, and study. Implementation of legislation is delegated to agencies or counties through their rule making powers. Thus, most of the desired coordination and simplification can be achieved by county/state cooperation and rule making under existing legislative statutes. Furthermore, permit coordination and simplification procedures are desirable for other types of actions besides geothermal developments. In our opinion, the directive of paragraph (16) page 5, that legislation is needed to achieve permit simplification, is premature. Similarly, the directive to the governor's advisory board, Section 2 page 6, reiterates this presupposition in mandating that the board "shall develop legislation for the establishment of a comprehensive permit system relating to geothermal and cable system development." The basis for this predetermination is not apparent and is inconsistent with the language of the standing committee report (page 2, paragraph 1) that specifically recognizes the need to enumerate and define the streamlining measures "before (emphasis added) any legislation should be promulgated."

We concur fully with the need for a review of the permit requirements and the specific actions cited in paragraphs (1), (2), and (3) on page 6. However, reference to the predetermined need for legislative action in paragraph (16) and Section 2 should be deleted and the paragraphs amended to reflect that the study include an evaluation of the regulatory mechanisms available for permit consolidation or simplification as well as legislative amendments, if necessary, based on the results and evaluation of the review of the permit processes.

Although the present system has been criticized frequently for its unwieldiness, objective analysis of the planning and permitting processes has not been systematically undertaken. In fact, much of the redundancy and complexity of these processes results from inconsistencies in environmental planning and management procedures between the various counties of the State as well as between State and Federal procedures. Thus, it is inevitable that a development which spans county boundaries and which impinges upon areas under Federal, State and County jurisdictions will encounter multiple procedures in the securing of necessary permits. The development of interisland electrical transmission cables constitutes a landmark development in that it is really the first project to physically span the boundaries between counties.

Resolution of redundancies between State and Federal permit processes has been achieved in many cases by the delegation of regulatory authority from the Federal to the State level. An example of this is the U.S. EPA National Pollutant Discharge Elimination System (NPDES) permitting process established by the Federal Clean Water Act. Implementation and enforcement of this system has been delegated by the EPA to the State Department of Health, and although subject to review by the Federal agency, the State sets the standards and issues the permits. Thus, there is precedent for and considerable experience in achieving cooperation between the State and the Federal governments in environmental management.

Considerably more of a problem exists in the reconciliation of divergences between County management processes, largely because the need to address such problems directly has not existed heretofore. Because of the unique intercounty nature of the geothermal/electrical transmission development, an examination of the applicable comparative regulatory frameworks of all the counties is certainly appropriate. Ultimately, developers and environmental managers alike would benefit from the evolution of consistent county planning and management procedures. To emphasize the need for reconciliation of intercounty differences in permitting procedures, we would suggest amendment of the proposed legislation to include specific language calling for examination of these differences. In particular, we recommend addition of the following language to Section 2:

...The report shall include but not be limited to:

(1) Analysis and recommendations for reconciliation of differences between county planning and permitting procedures relevant to geothermal and undersea cable development projects.

To accommodate the added language, numbering of subsequent clauses would be appropriately adjusted.

One further comment seems in order. Since no statutory language is being proposed, the directives proposed by this bill might be more appropriately addressed by resolution.

The Environmental Center would be pleased to contribute to developing the requested report particularly with regard to assisting in the provision of background materials or facilitating access to University expertise with regard to environmental permit procedures. Our experience in the public review process for environmental issues has made clear to us the need for deliberate and prudent examination of the State's environmental management procedures, and in that context, we strongly support the intent of this bill as amended.